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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,630	07/23/2007	Andres M Lozano		3543
7590	04/28/2010		EXAMINER	
ANDRES M LOZANO C/O FUNCTIONAL NEUROSCIENCE INC. 442 RUSSELL HILL ROAD TORONTO, ON M5P2S5 CANADA			SCHAETZLE, KENNEDY	
			ART UNIT	PAPER NUMBER
			3766	
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			04/28/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/583,630	Applicant(s) LOZANO, ANDRES M
	Examiner Kennedy J. Schaezle	Art Unit 3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-59 is/are pending in the application.
 - 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) 29-34 and 48-59 is/are allowed.
- 6) Claim(s) 1-28,35,41-43,46 and 47 is/are rejected.
- 7) Claim(s) 36-40,44 and 45 is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 20 June 2006 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) Notice of Informal Patent Application
- 6) Other: ____

DETAILED ACTION

Drawings

1. The drawings are objected to because the non-descript boxes of Fig. 1H must be appropriately labeled. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear what the phrase, “*...each of at least some* [emphasis added] of the signals...” connotes (lines 5 and 6 of claim 1). It is unclear, for example, how this phrase differs from reciting that at least some of the signals have a target temporal relationship, or that each of the signals has a target temporal relationship.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3-5, 7, 8, 12, 13, 16-20, 23-25, 35, 41-43, 46 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Kirkpatrick et al. (Pat. No. 6,480,743).

Regarding claim 1 and claims with related limitations, Kirkpatrick et al. disclose a method for treating a neural condition (col. 1, lines 11-16), comprising: positioning an electromagnetic transmitter 110 within transmission range of a target neural population; and transmitting a series of electromagnetic signals from the electromagnetic transmitter to the target neural population (see for example the text abridging cols. 5 and 6), so that each of at least some of the signals has a target temporal relationship to a corresponding one of a series of discharges from the target neural population (see for

example col. 13, lines 25-35), wherein the corresponding discharges are or would be transmitted by the neural population absent the signals (since at least some of the discharges represent abnormal sensed activity prior to stimulation, the discharges are or would be transmitted by the neural population absent the signals).

Regarding claims 3, 4 and 8, note col. 22, lines 30-54.

Regarding claim 5, note the text abridging cols. 5 and 6.

Regarding claim 13, note col. 1, lines 19-29.

Regarding claims 18-20, note col. 21, lines 1-17 and biphasic waveform 728.

Regarding claims 23 and 24, note the text associated with electrodes 412, 414, 416 and 418.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kirkpatrick et al..

Regarding claim 14, while Kirkpatrick et al. do not explicitly refer to the detection of muscle activity, it is taught that it is known to detect muscle movements in order to determine a clinical onset of seizures (see col. 2, line 57-67). Clearly those of ordinary skill in the art would have considered the detection of muscle activity in order to

determine seizure onset to be in the very least obvious to try. One would reasonably expect such a system to provide successful indication of neurological abnormalities because muscle activity is well associated with tremors and seizures.

Allowable Subject Matter

8. Claims 2, 6, 9-11, 14, 15, 21, 22 and 26-28 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
9. Claims 36-40, 44 and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
10. Claims 29-34 and 48-59 are allowed.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kennedy J. Schaetzle whose telephone number is 571 272-4954. The examiner can normally be reached on M-F from 9:30 -6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Layno can be reached on M-F at 571 272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kennedy J. Schaetzle/
Primary Examiner, Art Unit 3766

KJS
April 22, 2010